



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 28, 1992

Mr. Richard D. Monroe  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR92-234

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the act), V.T.C.S. article 6252-17a. Your request was assigned RQ-279.

The Department of Transportation (the "department") has received a request for records relating to a certain condemnation proceeding affecting property along U.S. Highway 59 South in Houston, Texas. The requestor has separated his request into four different categories of information. You advise that the department already has released to the requestor information responsive to two of his requests. In the remaining two requests, the requestor seeks the following:

a copy of the "offer letter" from the State Department of Highway and Public Transportation to the landowners regarding Project 8012-1-90, parcel 79, which led to the lawsuit styled the *State of Texas v. Jerry J. Moore, et al.*; No. 535578; In County Civil Court at Law Number Three (3) of Harris County, Texas. . . .  
[and]

prelitigation communications from the Department of Highways to the landowners relating to the condemnation proceeding.

We are informed that the litigation relating to parcel 79, *State v. Moore*, No. 535578 (Civ. Ct. No. 3 of Harris County, Mar. 9, 1989), concluded in 1989, and the state has

acquired parcel 79.<sup>1</sup> However, the state has yet to acquire four parcels of land related to the same project; you state that the department expects that the disputes over these remaining four parcels will be determined by jury trial.

You contend that the "acquisition exception" protects the requested information from disclosure. You do not state the section number of the particular exception to which you refer, but we believe you are referring to section 3(a)(5) of the act. You have submitted for our review copies of the information you believe is responsive to the request, but that you have declined to release to the requestor pending a decision from this office.

Section 3(a)(5) of the act excepts from required public disclosure

information pertaining to . . . appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor.

A previous decision of this office, Open Records Decision No. 564 (1990), resolves this issue. We stated in that decision that "[s]ection 3(a)(5) applies to information pertaining to appraisals or purchase price of real property, not only to the particular appraisal report prepared for a specific parcel of property." Open Records Decision No. 564 at 2. In our opinion, all of the information you have submitted for our review pertains to the appraisal or purchase price of parcel 79. Accordingly, but for the fact that the former owners of parcel 79 already have deeded over to the state title to parcel 79, the requested information would appear to fall within the ambit of section 3(a)(5). However, in Open Records Decision No. 564 we stated that, because parcels of land that are adjacent or near one another presumably would have some similar features that are relevant to valuing the land, information relating to the appraisal or purchase price of one parcel of land could constitute information pertaining to appraisals or pricing of nearby land. *Id.* Thus, in the situation before us, section 3(a)(5) can protect appraisal or purchase price information about parcel 79, even though the state acquired that parcel in advance of other parcels, if release of this information would harm the department's negotiating position with respect to the parcels of land the department has yet to acquire. *See id.*

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<sup>1</sup>We understand that none of the information the requestor seeks regarding the acquisition of parcel 79 was made public in *Moore*.

The department has determined that releasing the information regarding parcel 79 would damage its negotiating position with respect to the four unacquired parcels. We must accept the department's determination unless the records or other information show the contrary as a matter of law. *See id.* As we find no evidence to the contrary as a matter of law, we conclude that you may withhold the requested information under section 3(a)(5) of the act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-234.

Yours very truly,



Kym Oltrogge  
Assistant Attorney General  
Opinion Committee

KKO/mc

Ref: RQ-279

cc: Mr. T. Michael Neville  
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